I therefore conclude that I have no jurisdiction to order a stay of execution and refused this application also.

The applicant/appellant should pay the costs of both applications.

Applications refused.

Solicitors: *Kugarajah & Co.; D.F. Abang Zen.*

SUHAILI BIN HAJI CHUCHU v. PUBLIC PROSECUTOR

[A.Cr.J. (Huggins C.) May 24, 1982]

[Bandar Seri Begawan – Criminal Appeal No. 7 of 1982]

Criminal Law & Procedure – Sentence – Burglary and theft – Boy aged 15 years 7 months involved – Sentence of 4 months' Imprisonment – Boy had served already 1 month in custody – Order for release on bond.

The appellant and two or three other young people broke into a shopping complex and stole a considerable quantity of goods. These goods had been recovered. The learned Magistrate passed a sentence of 4 months' imprisonment on 3 of the accused, the fourth having been remanded for trial. They varied in age between 24 years and 15 years 7 months, the appellant being the youngest.

Counsel for the appellant submitted, *inter alia* that it was wrong that a boy at this tender age should be imprisoned with older men. The appellant was still at school. The learned Magistrate did not give any reason for imposing the same sentence on all these people.

Held, allowing the appeal: the appellant having already served one month in custody and having heard the clanging of the prison gates should be released upon his entering into a bond, with his father as surety in the sum of B$1,000 for a term of 2 years to come up for judgment if called upon.

CRIMINAL APPEAL.

Alli Kawi for the appellant.

James Chiew Siew Hua (Deputy Public Prosecutor) for the respondent.

Huggins C.: This Appellant and two or three other young people broke into a shopping complex and stole a considerable quantity of goods. These goods have in fact been recovered.

The learned Magistrate passed a sentence of four months' imprisonment on three of the accused, the fourth having been remanded for trial. They varied in age between 24 years and 15 years 7 months, the Appellant being the youngest. Mr. Alli Kawi submits that it is wrong that a boy at this tender age should be imprisoned with older men. He emphasises that this Appellant, as did the others, co-operated with the Police and he points out that section 262 of the Criminal Procedure Code gave the learned Magistrate an option to take another course than imprisonment. Although a sentence of imprisonment was mandatory in the general way, section 262 overrides that in respect of a youthful offender. This Appellant is still at school and it is submitted that the sentence was wrong.

It is very difficult to say that a sentence of four months' imprisonment is manifestly excessive, but I am inclined to agree with Mr. Alli Kawi that in all the circumstances it was wrong in the present case. The learned Magistrate did not give any reason for imposing the same sentence on all these people. There was a considerable difference in their ages and it seems to me inevitable that there must have been some measure of encouragement of this young man by the older men and it is right that the older men should, therefore, take the greater part of the blame. Having said that, I think that the older men were perhaps very fortunate that they did not receive a sentence greater than four months' imprisonment. However, in all the circumstances, I think that the proper course here, the Appellant having already served one month in custody and having heard the clanging of the prison gates, is that I should allow the appeal and, under section 262(1)(c), release this offender upon his entering into a bond, with his father as surely in the sum of B$1,000/=, for a term of two years to come up for judgment if called upon.

Appeal allowed.

Solicitors: *Alli Kawi & Co.*